

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CITY OF INDIANOLA
NPDES Permit #91-33-0-01
Warren County, Iowa**

**AMENDED ADMINISTRATIVE
CONSENT ORDER
NO. 2009-WW-24-A1**

TO: City of Indianola
Kenan Bresnan, Mayor
PO Box 299
Indianola, IA 50125-0299

I. SUMMARY

This amended administrative consent order (Amended Order) is entered into between the City of Indianola (Indianola) and the Iowa Department of Natural Resources (DNR) for the purpose of establishing a compliance schedule for the completion of construction of Indianola's sanitary sewer collection system. The parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Janet Gastineau, Environmental Specialist
DNR Field Office #5
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309
Phone: 515/725-0268

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515/281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (wastewater) and the rules adopted or permits issued pursuant to that part, and Iowa Code section 455B.109 and

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567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The Department asserts the following facts:

1. The Indianola wastewater treatment facility is located northwest of town along Cavitt Creek. Indianola operates the wastewater treatment facility and collection system pursuant to NPDES Permit # 91-33-0-01. The facility consists of a mechanical bar screen, a primary pumping station, grit removal, two primary clarifiers, a secondary pumping station, a fixed film bioreactor, three aeration tanks, two final clarifiers, a final pumping station, four mixed media polishing filters to treat a portion of the final effluent (no longer in use), and two chlorine contact tanks (no chlorine used). Primary clarifier sludge is treated in the heated primary and secondary anaerobic digesters; sludge is stored in two concrete sludge holding tanks with a 1.2 million gallon total holding capacity.

A 27 million gallon storm water equalization basin is located west of the treatment plant. A storm water holding pond, an overflow basin, and a lift station are located at the old south treatment plant. There are five other lift stations in the collection system.

Indianola is divided into nine service areas:

- The McCord Service Area wastewater flows are pumped through a lift station to the South Plant Service Area.
- The South Plant Service Area wastewater flows are pumped through a lift station to the Morlock Service Area. The South Plant Lift Station is located at the former treatment facility abandoned in the early 1990s. There is an 11 million gallon equalization basin still in use at this location.
- The Plainview Service Area wastewater flows are pumped through a lift station to the Morlock Service Area.
- The Morlock Service Area and those flows received from the McCord Service Area via the South Plant Service Area, the Plainview Service Area, and the South Plant Service Area are pumped through a lift station to the Northeast Service Area.
- The Northeast and Northwest Service Areas flow by gravity to the North Wastewater Treatment Facility.
- There are also three smaller service areas that each pump wastewater flows through a lift station to the Northwest or Northeast Service Areas. Each of these three service areas has fewer than 10 connections to the system and was constructed in the last five years.

2. Indianola has expended approximately \$1.8 million since 1995 to address SSOs and bypasses, and has agreed to continue that effort pursuant to the schedule set forth herein.

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3. Beginning in 2003 and continuing to the present date, Indianola has experienced sanitary sewer overflows (SSOs) and bypasses from the Indianola sanitary sewer collection system and treatment system. Residents have reported backups of sewage into their homes.

4. The DNR met with Indianola officials on November 14, 2007 at which time Indianola agreed to submit an engineering plan to the DNR no later than May 2008, and to eliminate SSOs and basement backups by the end of 2010. On November 15, 2007, Indianola agreed in writing to conduct a SSO study and to submit a plan of action by May 1, 2008.

5. In December of 2007 and February of 2008, the DNR sent correspondence to Indianola reaffirming the 2010 deadline to eliminate SSOs and sewer backups.

6. On April 17, 2008, Indianola submitted a letter to the DNR indicating plans to work with the engineering firm Veenstra & Kimm to study the Indianola wastewater collection system and to evaluate and identify repairs to eliminate SSOs, which would include repairs to residential and public sewers. Based upon information developed by Indianola since November 15, 2007, a phased approach was proposed with the final phase completed at the end of 2013.

7. On June 12, Veenstra & Kimm submitted, on behalf of Indianola, a proposed project schedule for the elimination of all SSOs and backups (Infiltration and Inflow Project). The schedule divided the Infiltration and Inflow Project into the following four phases:

Phase I: Complete the manhole inspections and develop and implement a rehabilitation project for the sanitary sewer mains and manholes in the Plainview and Morlock Service Areas and the south ½ of the Northwest Service Area.

Phase II: Northeast Service Area and the north ½ of the Northwest Service Area. Perform flow metering, manhole inspections and sewer main televising. Perform private side residential service investigations. Develop and implement a rehabilitation project for the sanitary sewer mains and manholes in these areas. Implement the infiltration and inflow program on the private side with residents in these areas.

Phase III: South Plant Equalization. Install flow meters to quantify flow from the South Plant Service Area. Evaluate equalization requirements including basin sizes, influent splitter boxes, and stormwater pump capacities. Evaluate the need to expand the existing basin. Determine the modifications to the polishing pond which may be needed to convert it to an equalization basin. Evaluate return flow capabilities of equalization basin.

Phase IV: South Plant Service Area. Perform manhole inspections and sewer main televising. Perform private side residential service investigations. Develop and implement a rehabilitation project for the sanitary sewer mains and manholes. Implement the infiltration

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and inflow program on the private side with the residents. This phase may not be necessary depending on the results of Phase III.

8. On June 3, 2008, Indianola reported two SSOs. Records show that Indianola received 1.8" of rainfall on May 30th and 1.2" of rainfall on June 3, 2008. On June 6, 2008, Indianola reported five SSOs which occurred on June 4th and 5th. Indianola experienced 2.3" of rainfall on June 4th and 5th.

9. On June 9th, Indianola reported six SSOs. Records show that Indianola experienced .6" of rainfall on June 8th and 1.2" of rainfall on June 9th.

10. On June 12, 2008, Indianola reported six SSOs. Records show that Indianola received 2" of rainfall on June 12th.

11. On July 8, 2008, Indianola reported thirteen SSOs and forty-seven basement backups of sewage. Records show that Indianola received 4.2" of rainfall on July 7th and 8th.

12. On July 18, 2008, Indianola reported three SSOs. Records show that Indianola received 2.4" of rainfall on July 18th.

13. On July 28, 2008, Indianola reported eight SSOs. Records show that Indianola received 3.5" of rainfall on July 27th and 28th.

New paragraph 14. Due to delays related to the State of Iowa's completion of the necessary environmental reviews of the proposed Phase 3 project, Indianola has been prevented from initiating Phase 3. This Amendment is necessary to revise the deadlines established by the original to reflect the delay in the completion of the state reviews and approvals for this project.

IV. CONCLUSIONS OF LAW

The DNR asserts the following conclusions of law:

1. Pursuant to 567 IAC 63.6(1), bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited. The above-mentioned facts indicate that Indianola can not comply with this requirement without further system improvements. Indianola is undertaking such improvements.

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V. ORDER

By the execution of this Amended Order, the DNR orders and Indianola agrees to the following schedule:

1. *The provisions of paragraph 1 have been satisfied.*

2. Indianola has undertaken efforts to ensure that private footing drains and other clear water connections to private service lines are investigated, identified and removed from the Indianola collection system. Indianola shall continue to investigate, identify and remove all private clear water connections to private sewer lines. Indianola shall address as many private clear water connections as reasonably possible in 2009. Beginning January 1, 2010, Indianola shall investigate a minimum of 300 private homes per calendar year to determine whether any private footing drains or other clear water connections to private service lines exist at each home. Identified private clear water connections shall be removed in a timely manner. By December 31, 2018 all identified private footing drains and other clear water connections to private sewer lines shall be removed.

3. *The provisions of paragraph 3 have been satisfied.*

4. *The provisions of paragraph 4 have been satisfied.*

5. *The provisions of paragraph 5 have been satisfied.*

6. *The provisions of paragraph 6 have been satisfied.*

Revised paragraph 7. By **July 31, 2011** Indianola shall complete Phase III of the Infiltration and Inflow Project, excluding the private residence portions of Phase III.

8. By December 31, 2011, Indianola shall complete Phase II of the Infiltration and Inflow Project, excluding the private residence portions of Phase II.

9. By May 4, 2012, Indianola shall complete the study and design of Phase IV of the Infiltration and Inflow Project and submit the results to DNR.

10. By September 7, 2012, Indianola shall submit plans, specification, and a construction permit application for such portions of Phase IV as are identified to be necessary in the May 4, 2012 submission to address the SSOs and sewer backups.

11. By December 31, 2013, Indianola shall complete such portions of Phase IV as required in the construction permit application approved by DNR.

12. Indianola shall pay a stipulated penalty of \$1,000 per deadline for each month in which Indianola fails to meet any the deadlines contained in paragraphs 1 through 11, above. Payment is due within sixty days of Indianola's receipt of a letter from the Department

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stating the amount and deadline not met. **The requirements of paragraphs 1, 3, 4, 5, and 6 of the original order have been deemed by DNR to have been satisfied.**

13.A. If the performance of any part of this order by Indianola is prevented, hindered or delayed by reason of any cause or causes beyond the control of Indianola, and which cannot be overcome by due diligence, Indianola City shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event, and this order shall be deemed suspended so long as and to the extent that any such cause prevents or delays its performance.

B. Indianola shall give notice to the DNR within 5 days after the discovery by Indianola of any condition referred to in paragraph 13.A. The Department shall make a determination as to the applicability of any such claim within 5 days after receiving notice.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with stipulated penalties.

a. **Economic Benefit.** The plan set forth in this Order, and the activities to date, have been undertaken with consideration of the cost impacts on Indianola. Delaying the upgrade or replacement of the existing sanitary sewer collection system allows for the distribution of costs over time to reduce the fiscal impact of the improvements. The execution of this Order constitutes a good faith attempt by both parties to achieve compliance and resolve past violations, therefore the DNR is assessing economic benefit penalties only in the event of noncompliance with the compliance schedule contained in this Order. The stipulated penalties contained herein give consideration to the economic benefit achieved by Indianola.

b. **Gravity of the Violation.** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. The Indianola sewer collection system has been unable to maintain compliance with the applicable requirements and this has caused a direct threat to human health due to the back-up of raw sewage into homes. In light of these factors and the

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current cooperative efforts of Indianola, the DNR has determined that the assessment of a penalty is appropriate only in the event of noncompliance with the compliance schedule contained in this Order. The stipulated penalties contained herein also give consideration to the gravity of the violation.

c. Culpability. Indianola has been aware of the inadequacies of the existing sanitary sewer collection system for a considerable period of time but has not yet completed the improvements required to correct the problem, although mitigating steps have been attempted. This culpability is somewhat mitigated by the steps Indianola is now taking to address the problem. The DNR has determined that the assessment of a penalty is appropriate only in the event of noncompliance with the compliance schedule contained in this Order. The stipulated penalties contained herein also give consideration to the culpability of Indianola.

3. The total stipulated penalties assessed pursuant to this Order shall not exceed \$10,000. The Department may seek the referral of this matter to the Iowa Attorney General in lieu of collecting the agreed upon stipulated penalties and may also seek such referral to address continuing noncompliance once the administrative maximum has been achieved.

VII. WAIVER OF APPEAL RIGHTS

This Amended Order is entered into knowingly by and with the consent of Indianola. For that reason, Indianola waives the right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE


Failure to comply with this Amended Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with section V. Order, paragraphs 1 through 11, of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this Order. The DNR reserves the right to issue a new administrative order with an administrative penalty or to seek referral to the Attorney General in lieu of collecting the agreed upon stipulated penalties established by this Order.

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ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 19th day of
May, 2011



KENAN BRESNAN, MAYOR
City of Indianola

Dated this 2 day of
May, 2011

NPDES #9133001; Field Office #5; Jon Tack; EPA; Wayne Farrand; I C.1